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The Walt Disney Company, et al.

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ESPLANADE PRODUCTIONS, INC., a
Delaware corporation,

13
14 Plaintiff,

15 v.

16 THE WALT DISNEY COMPANY, a
Delaware corporation; DISNEY
17 ENTERPRISES, INC., a Delaware
corporation; WALT DISNEY PICTURES,
a California corporation; ABC, INC., a
18 New York corporation; BUENA VISTA
HOME ENTERTAINMENT, INC., a
19 California corporation; DISNEY
CONSUMER PRODUCTS, INC., a
20 California corporation; DISNEY
CONSUMER PRODUCTS AND
21 INTERACTIVE MEDIA, INC., a
California corporation; DISNEY BOOK
22 GROUP, LLC, a Delaware limited liability
company; BUENA VISTA BOOKS, INC.,
23 a California corporation; DISNEY
INTERACTIVE STUDIOS, INC., a
24 California corporation; DISNEY STORE
USA, LLC, a Delaware limited liability
25 company; DISNEY SHOPPING, INC., a
Delaware corporation; and DOES 1
26 through 10, inclusive,

27 Defendants.
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Case No. 2:17-cv-02185-MWF-JC

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT**

[Notice of Motion to Dismiss,
Memorandum of Points and
Authorities, Declaration, Proposed
Order, and Notice of Lodging filed
concurrently]

Hearing Date: June 26, 2017
Hearing Time: 10:00 a.m.
Place: Courtroom 5A
Judge: Hon. Michael W. Fitzgerald

Action Filing Date: March 21, 2017

REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Defendants The Walt Disney Company, Disney Enterprises, Inc., Walt Disney Pictures, ABC, Inc., Buena Vista Home Entertainment, Inc., Disney Consumer Products, Inc., Disney Consumer Products and Interactive Media, Inc., Disney Book Group, LLC, Buena Vista Books, Inc., Disney Interactive Studios, Inc., Disney Store USA, LLC, and Disney Shopping, Inc., (collectively, “Defendants”) respectfully request that the Court take judicial notice of the DVD of the animated motion picture *Zootopia*, a true and correct copy of which is attached and lodged with the Court as Exhibit A to the concurrently filed Declaration of Craig P. Bloom in Support of Defendants’ Motion to Dismiss Plaintiff’s Complaint.

**DEFENDANTS’ REQUEST SHOULD BE GRANTED BECAUSE
JUDICIAL NOTICE IS PROPERLY TAKEN OF WORKS WHOSE
CONTENTS ARE ALLEGED IN THE COMPLAINT**

Federal Rule of Evidence 201 provides that a court may “judicially notice a fact that is not subject to a reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court must take judicial notice where a party “requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c).

On a motion to dismiss, a court has discretion to consider documents outside the pleadings when the documents are referenced in the complaint. *See, e.g., Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1128 (C.D. Cal. 2007) (“a court may consider documents which are not physically attached to the complaint but whose contents are alleged in the complaint and whose authenticity no party questions.”) (internal citation omitted); *Basile v. Twentieth Century Fox Film Corp.*, 2014 WL 12521340, at *1 (C.D. Cal. Aug. 19, 2014) (holding that a document may be “incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim”) (internal

1 quotation omitted). Such consideration does not convert a motion to dismiss into a
 2 motion for summary judgment. *See id.*

3 Courts routinely take judicial notice of allegedly infringing works when
 4 evaluating substantial similarity in copyright cases. *See, e.g., Gallagher v. Lions*
 5 *Gate Entertainment, Inc.*, 2015 WL 12481504, at *2, n.2 (C.D. Cal. Sept. 11, 2015)
 6 (taking judicial notice of the motion picture *The Cabin in the Woods*); *Basile*, 2014
 7 WL 12521340, at *2 (taking judicial notice of allegedly infringing motion picture
 8 *Prometheus*); *DuckHole, Inc. v. NBC Universal Media LLC*, 2013 WL 5797279, at
 9 *3-4 (C.D. Cal. Sept. 6, 2013) (taking judicial notice of allegedly infringing
 10 episodes); *Thomas v. Walt Disney Co.*, 2008 WL 425647, at *2, n.1 (N.D. Cal. Feb.
 11 14, 2008) (taking judicial notice of allegedly infringing motion picture *Finding*
 12 *Nemo*); *Zella*, 529 F. Supp. 2d at 1128 (taking judicial notice of allegedly infringing
 13 episodes).

14 Here, judicial notice is warranted because Plaintiff refers extensively to
 15 Defendants' motion picture *Zootopia* in its Complaint. (Compl. ¶¶ 53–80). The
 16 picture is “not subject to a reasonable dispute . . . [and] can be accurately and
 17 readily determined from sources whose accuracy cannot reasonably be questioned.”
 18 Fed. R. Evid. 201. Accordingly, Defendants respectfully request that the Court take
 19 judicial notice of the *Zootopia* DVD.

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 21 Dated: May 22, 2017

O'MELVENY & MYERS LLP

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 23 By: /s/ Daniel M. Petrocelli

Daniel M. Petrocelli

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 25 Attorneys for Defendants
 26 The Walt Disney Company, et al.
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